IN THE HIGH COURT OF TANZANIA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 116 OF 1995

(c/f (PC) Civil Appeal No. 13/1988)

ARON ULAYA ..... APPLICANT

Versus

DAMIANI ULAYA ..... RESPONDENT

R U L I N G

MUNUO, J

The application is for extension of time to file an application for review of PC Civil Appeal No. 13/88 which was struck off on the 11/1/93 for the reason that the said appeal was time barred.

Mr. Nsimba learned advocate for the applicant submitted that the copy of judgement in the material appeal was issued on the 13/2/1988 and the appeal to the High Court was filed on the 22/2/1988 so the appeal was in time. The intended review therefore has overwhelming chances of success provided that the present application for extension of time is granted under section 14(1) of the Law of Limitation Act No. 10/71.

Mr. Kinabo learned advocate for the respondent submitted that PC Civil Appeal No. 13 of 1988 contravened the provisions of section 25(3) of the Magistrates Courts Act, 1984 so it was in itself incompetent so it is of no use allowing the present application.

As noted by the respondent's advocate, PC Civil Appeal No. 13/88 the substantive appeal ought to have been filed in the District Court under S. 25(3) of the Magistrates Courts Act, 1984 which states:

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"25(3) Every appeal to the High Court shall be filed in the District Court from the decision or order of which the appeal is brought."

The ERV No. 382850 dated 22/2/88 in PC Civil Appeal No. 13/88 shows that the said appeal was wrongly filed in this court. The appeal ought to have been filed in the District Court at Moshi in compliance with the provisions of section 25(3) of the Magistrates Courts Act. That means even if the present application for extension of time were allowed and subsequently the review were also allowed, the substantive appeal would in law be incompetent because it was filed in the wrong court. In that respect the application has to fail.

To promote reconcilliation between the warring brothers, either party shall bear their costs for the application.

It is so Ordered.

(E. N. Munuo)

JUDGE

23/4/96.

At Arusha this 23/4/96.

Applicant: Mr. Kamara for TLC.

Respondent: Mr. Kinabo for.

(E. N. Munuo)

JUDGE

23/4/96.

ENM/el.